

Duke, Daphne

283529

From: Snowden, Ben <BSnowden@kilpatricktownsend.com>
Sent: Tuesday, March 19, 2019 11:18 AM
To: Frank R. Ellerbe III <fellerbe@robinsongray.com>; Minges, Josh <Josh.Minges@psc.sc.gov>; Richard Whitt <rlwhitt@austinrogerspa.com>; Rebecca J. Dulin <Rebecca.Dulin@duke-energy.com>; Heather Smith <heather.smith@duke-energy.com>
Cc: Melchers, Joseph <Joseph.Melchers@psc.sc.gov>; Dowdy, Joe <JDowdy@kilpatricktownsend.com>; {F13828}.Clients@f8eed.imatech.work
Subject: [External] RE: Docket No. 2017-281-E: Hearing Officer Proposed Prehearing Report

Dear Josh:

Needless to say, we disagree strongly with Mr. Ellerbe's request for an additional 60 days to conduct discovery. As referenced in our letter of March 18, Duke has had almost two months to review Complainants' second supplemental responses and to decide whether to make additional requests – which they did in fact do in their February 27 letter. Complainants responded to those requests without objection. Duke is now asking for two *additional* months in which to decide whether to propound even more discovery. The Company's request for additional time seems to serve no purpose but to cause additional delay.

Complainants acknowledge that one cause of delay in this case has been Complainants' lagging production of supplemental responses to Duke's discovery (Duke's burdensome and overbroad discovery requests were another). As everyone understands, there have been a great many energy-related proceedings and other informal matters ongoing in South Carolina over the last year, and both counsel and client resources have been spread thin. In acknowledgement of these past delays, we did not take issue with Duke's request to have until March 1 to assess Complainants' supplemental production. But Duke cannot continue to trot out past delays as a justification for further delays indefinitely.

It bears noting that the additional 60-day period Duke now requests is almost equal in duration to the entire hearing schedule initially established by the Commission in this docket. Under that schedule, Duke had two weeks after the filing of Complainants' prefiled direct testimony to conduct discovery and formulate their rebuttal testimony. Complainants submit that such a schedule is appropriate to this case, which turns on a single, discrete issue – whether the five-year PPA term offered by Duke is sufficient to provide QFs reasonable access to capital, as required by PURPA. (Duke is perfectly happy with the status quo, and so any further delays in this case work to Duke's benefit.) Duke's request for an additional two months in which to come up with additional discovery requests is entirely out of proportion to the needs of the case.

Accordingly, we reprise our request that the case be taken out of abeyance and set for hearing.

Ben Snowden

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From: Frank R. Ellerbe III <fellerbe@robinsongray.com>

Sent: Monday, March 18, 2019 2:00 PM

To: Snowden, Ben <BSnowden@kilpatricktownsend.com>; Minges, Josh <Josh.Minges@psc.sc.gov>; Richard Whitt <rlwhitt@austinrogerspa.com>; Rebecca J. Dulin <Rebecca.Dulin@duke-energy.com>; Heather Smith <heather.smith@duke-energy.com>

Cc: Melchers, Joseph <Joseph.Melchers@psc.sc.gov>; Dowdy, Joe <JDowdy@kilpatricktownsend.com>;

F13828.Clients@f8eed.imatege.work

Subject: RE: Docket No. 2017-281-E: Hearing Officer Proposed Prehearing Report

Josh:

I am responding to Ben Snowden's report to you of this morning in the referenced docket. As indicated in the two letters that he attached to his email, we have made some progress with discovery. However, complainants' most recent response to our letter and their most recent production of documents to us came today. We have not had time to thoroughly review Ben's letter or even download the supplemental documents they have produced. In addition, throughout our discussions with complainants about their discovery deficiencies, we have worked in good faith to narrow our requests while also reminding them that we planned to submit focused follow-up discovery when we received complete responses to them. We still intend to send them that follow-up discovery.

We do not agree that this proceeding is ready to move forward now as urged in Ben's report. Limited additional discovery is necessary after allowing reasonable time to review Complainants' letter and to assess the responsiveness of the supplemental documents they have produced. Complainants' expressed desire to move the case forward now stands in stark contrast to the unexplained 6 month period that passed between our meeting on discovery in July 2018 and the first production of documents in response to that meeting in January 2019.

We respectfully submit that the case should continue to be held in abeyance for a period of 60 days to allow us to finalize initial discovery, after which we propose that the parties have a status conference with you to discuss a schedule for the filing of additional testimony and scheduling a hearing.

Frank



FRANK ELLERBE MEMBER

DIRECT 803.227.1112

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From: Snowden, Ben [<mailto:BSnowden@kilpatricktownsend.com>]

Sent: Monday, March 18, 2019 11:10 AM

To: Frank R. Ellerbe III <fellerbe@robinsongray.com>; Minges, Josh <Josh.Minges@psc.sc.gov>; Richard Whitt <rlwhitt@austinrogerspa.com>; Rebecca J. Dulin <Rebecca.Dulin@duke-energy.com>; Heather Smith <heather.smith@duke-energy.com>

Cc: Melchers, Joseph <Joseph.Melchers@psc.sc.gov>; Butler, David <David.Butler@psc.sc.gov>; {F13828}.Clients@f8eed.imanage.work; Dowdy, Joe <JDowdy@kilpatricktownsend.com>

Subject: RE: Docket No. 2017-281-E: Hearing Officer Proposed Prehearing Report

Dear Josh:

I am following up on the status of this docket. On February 27, Duke's counsel transmitted a letter (attached) identifying several alleged "deficiencies" in Complainants' recent production, requesting supplementation of most of Complainants prior productions to address any recent developments, and making additional requests for documents and information. This morning complainants transmitted a letter responding each of the items identified in Duke's Feb. 27 letter, and also produced a handful of additional documents via FTP. In addition, as indicated in the letter, Complainants are mindful of their obligation to supplement their responses and will promptly make such supplemental responses as are required under Rule 26(e).

Complainants have now fulfilled their obligations to produce additional documents and information consistent with the agreement reached by the parties at our meet-and-confer last July. Duke has also had almost two months to review Complainants' Second Supplemental Production and make additional requests -- which it did in the February 27 letter (and which we have responded to). Accordingly, we ask that this matter be taken out of abeyance and put back on a hearing schedule at the earliest possible date. Thank you.

Ben

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From: Frank R. Ellerbe III <fellerbe@robinsongray.com>

Sent: Wednesday, February 6, 2019 8:54 AM

To: Minges, Josh <Josh.Minges@psc.sc.gov>; Richard Whitt <rlwhitt@austinrogerspa.com>; Snowden, Ben <BSnowden@kilpatricktownsend.com>; Rebecca J. Dulin <Rebecca.Dulin@duke-energy.com>; Heather Smith <heather.smith@duke-energy.com>

Cc: Melchers, Joseph <Joseph.Melchers@psc.sc.gov>; Butler, David <David.Butler@psc.sc.gov>; {F13828}.Clients@f8eed.imanage.work

Subject: RE: Docket No. 2017-281-E: Hearing Officer Proposed Prehearing Report

Josh:

Thanks for the inquiry on the status of this docket. Since it's been a while since we have had any communication with the Commission on this case I think it's important to review the procedural history.

DEC and DEP served an initial set of discovery requests on the complainants in September 2017 and a second set in October, 2017. We filed a motion to compel adequate responses to the first set on October 26th. Following a meeting with you on November 15, 2017, the parties engaged in discussions in an attempt to resolve our discovery disagreements. Those discussions started in late 2017 and Continued in early 2018. There was additional back-and-forth among the parties culminating in an agreement to have an in-person meeting in July 2018 to try to reach an agreement to resolve the disputes over our discovery requests. At the July meeting the parties agreed on documents to be produced by the complainants. DEC and DEP agreed to review the documents produced by complainants and reserved the right to request additional documents; complainants reserved the right to object to any additional production.

Complainants produced documents to DEC and DEP on January 4th, January 24th and January 28th of 2019. The cover letter for these recent productions indicates that they were produced pursuant to our July 2018 agreement. Representatives of DEC and DEP have not yet had a chance to review the documents produced and we are not able to confirm what was produced or to what extent the production resolves our discovery disputes. Because of competing demands on the time of the people who need to review the documents (the same people are involved in legislative issues and other dockets pending at the Commission) we believe that it will take us several weeks to review the complainants' production. Given that it took complainants 6 months to produce these documents to us, we think it is reasonable for us to take that time. We will review the documents by March 1st and provide you an updated status report.

Thank you and please let me know if there are additional questions.

Frank



FRANK ELLERBE MEMBER

DIRECT 803.227.1112

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From: Minges, Josh [<mailto:Josh.Minges@psc.sc.gov>]

Sent: Tuesday, February 5, 2019 11:14 AM

To: Richard Whitt <rlwhitt@austinrogerspa.com>; Snowden, Ben (BSnowden@kilpatricktownsend.com) <bsnowden@kilpatricktownsend.com>; Rebecca J. Dulin <Rebecca.Dulin@duke-energy.com>; Frank R. Ellerbe III <fellerbe@robinsongray.com>; Heather Smith <heather.smith@duke-energy.com>

Cc: Melchers, Joseph <Joseph.Melchers@psc.sc.gov>; Butler, David <David.Butler@psc.sc.gov>

Subject: Re: Docket No. 2017-281-E: Hearing Officer Proposed Prehearing Report

Folks,

Would you please provide a status update for this docket.

Thank you.

Josh Minges

Hearing Officer

From: Minges, Josh <josh.minges@psc.sc.gov>

Sent: Wednesday, November 22, 2017 12:36 PM

To: Richard Whitt; Snowden, Ben (BSnowden@kilpatricktownsend.com); rebecca.dulin@duke-energy.com; Frank Ellerbe; Heather Smith

Cc: Melchers, Joseph; Butler, David

Subject: Docket No. 2017-281-E: Hearing Officer Proposed Prehearing Report

Parties:

Please find my proposed Hearing Officer Prehearing Report, required by Reg. 103-839(B), that discusses our meeting held last Wednesday, November 15, 2017.

I hope everyone has a great Thanksgiving.

Josh Minges
Hearing Officer

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